

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 LEONARD HAIRSTON,
#0711642)
8 Plaintiff,)
9 vs.)
10 CLARK COUNTY SHERIFF, *et al.*,)
11)
12 Defendants.)

2:09-cv-00808-PMP-RJJ

ORDER

14 This is a civil rights action filed pursuant to 42 U.S.C. § 1983. The court now reviews the
15 complaint.

16 || I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner’s claims, “if the allegation of poverty is untrue,” or if the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

1 Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided
 2 for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under Section
 3 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under Rule
 4 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232
 5 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
 6 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
 7 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
 8 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
 9 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard, the
 10 court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital*
 11 *Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff and
 12 resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

13 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings
 14 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21
 15 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). All
 16 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner’s claims
 17 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are
 18 untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement of a legal
 19 interest which clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*
 20 fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932
 21 F.2d 795, 798 (9th Cir. 1991). When a court dismisses a complaint under § 1915(e), the plaintiff should
 22 be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
 23 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United*
 24 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

25 To sustain an action under section 1983, a plaintiff must show (1) that the conduct complained
 26 of was committed by a person acting under color of state law; and (2) that the conduct deprived the

1 plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689 (9th Cir.
 2 2006).

3 **II. Instant Complaint**

4 As an initial matter, on May 25, 2010, the court granted plaintiff’s motion to amend his
 5 complaint (docket #11). On August 11, 2010 plaintiff filed a document he styled “Amended Complaint”
 6 but that is merely a list of purported defendants (docket #15). However, Local Rule 15-1 requires that
 7 an amended complaint be complete in itself without reference to any prior pleading. A complaint must
 8 contain (1) a short and plain statement of the grounds for the court’s jurisdiction; (2) a short and plain
 9 statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief
 10 sought. Fed. R. Civ. P. 8(a). The document that plaintiff filed as an amended complaint is wholly
 11 insufficient and is stricken. Accordingly, the operative complaint is docket #7, filed on March 19, 2010.

12 Plaintiff, who is a pretrial detainee at the Clark County Detention Center (“CCDC”), has sued
 13 Clark County Sheriff Doug Gillespie, and, it appears, two state judges and a district attorney, and Does
 14 from the Metropolitan police department. Plaintiff appears to challenge his “unlawful detention.” For
 15 the reasons discussed below, plaintiff’s complaint is dismissed.

16 First, the judges and district attorney named as defendants are immune from suit based on the
 17 principles of either absolute or qualified immunity. With respect to judges: “[c]ourts have extended
 18 absolute judicial immunity from damage actions under 42 U.S.C. § 1983 not only to judges but also to
 19 officers whose functions bear a close association to the judicial process.” *Demoran v. Will*, 781 F.2d
 20 155, 156 (9th Cir. 1986). “Judges and those performing judge-like functions are absolutely immune from
 21 damage liability for acts performed in their official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075
 22 (9th Cir. 1986) (*en banc*); *see also Miller v. Davis*, 1142, 1145 (9th Cir. 2008); *Partington v. Gedan*, 961
 23 F.2d 852, 860 n.8 (9th Cir. 1992); *Houghton v. Osborne*, 834 F.2d 745, 750 (9th Cir. 1987). Judges retain
 24 their immunity when they are accused of acting maliciously or corruptly, *see Mireles v. Waco*, 502 U.S.
 25 9, 11 (1991) (*per curiam*); *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *Meek v. County of*
 26 *Riverside*, 183 F.3d 962, 965 (9th Cir. 1999); *Tanner v. Heise*, 879 F.2d 572, 576 (9th Cir. 1989), and

1 when they are accused of acting in error, *see Meek*, 183 F.3d at 965; *Schucker v. Rockwood*, 846 F.2d
 2 1202, 1204 (9th Cir. 1988) (*per curiam*); *Ashelman*, 793 F.2d at 1075.

3 With respect to the district attorney named as defendants: prosecutorial immunity protects
 4 eligible government officials when they are acting pursuant to their official role as advocate for the State
 5 performing functions “intimately associated with the judicial phase of the criminal process.” *Imbler v.*
 6 *Pachtman*, 424 U.S. 409, 430 (1976); *see also Kalina v. Fletcher*, 522 U.S. 118, 124-26 (1997); *Botello*
 7 *v. Gammick*, 413 F.3d 971, 975 (9th Cir. 2005); *Genzler v. Longanbach*, 410 F.3d 630, 636-37 (9th Cir.
 8 2005); *KRL v. Moore*, 384 F.3d 1105, 1110 (9th Cir. 2004); *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th
 9 Cir. 2003). Prosecutorial immunity does not extend to those actions of a prosecutor that are
 10 “administrative” or “investigative” in nature. *See Hartman v. Moore*, 547 U.S. 250, 261-62 n.8 (2006);
 11 *Buckley v. Fitzsimmons*, 509 U.S. 259, 271-73 (1993); *Botello*, 413 F.3d at 975-76; *Genzler*, 410 F.3d
 12 at 636. State prosecutors are entitled to absolute prosecutorial immunity for acts taken in their official
 13 capacity. *See Kalina v. Fletcher*, 522 U.S. 118, 123-25 (1997); *Buckley v. Fitzsimmons*, 509 U.S. 259,
 14 269-70 (1993); *Imbler*, 424 U.S. at 427, 430-31; *Botello*, 413 F.3d at 975; *Genzler*, 410 F.3d at 636;
 15 *KRL*, 384 F.3d at 1110; *Broam*, 320 F.3d at 1028. Accordingly, the defendant judges and district
 16 attorney are entitled to absolute immunity from this suit.

17 Moreover, regarding plaintiff’s allegations that he is unlawfully detained, when a prisoner
 18 challenges the legality or duration of his custody, or raises a constitutional challenge which could entitle
 19 him to an earlier release, his sole remedy is a writ of *habeas corpus*. *Preiser v. Rodriguez*, 411 U.S. 475
 20 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991); *Heck v.*
 21 *Humphrey*, 512 U.S. 477, 487-88 (1994). Plaintiff appears to challenge the fact of his pretrial detention.
 22 His sole remedy for such claims is a writ of *habeas corpus*. Accordingly, his claims are subject to
 23 dismissal on that basis. The court notes that plaintiff attached a document to his filing at docket #7 that
 24 appears to be state criminal court minutes reflecting that his state petition for writ of *habeas corpus* was
 25 denied.

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1 Because amendment would be futile, the entire complaint is dismissed without leave to amend.

2 **III. Conclusion**

3 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** with prejudice.

4 **IT IS FURTHER ORDERED** that the following motions: motion for Order of Judgement and
5 discharge of unlawful detention (docket #14); motion for Order of Discharge pursuant to violation of
6 speedy trial right (docket #18); motion for review of custody refuse to discharge order for transfer of
7 custody (docket #22) are all **DENIED**.

8 **IT IS FURTHER ORDERED** that the following documents: amended complaint (docket #15);
9 memorandum re motion for Order of Judgment and discharge of unlawful detention (docket #17); notice
10 of amended violation of 4th Amendment illegal search, seizure, and 5th 14th Amendment failure to
11 produce evidence (docket #19); memorandum to U.S. District Judge Philip M. Pro (docket #20); notice
12 of amended violation of 5 - 14th Amendment vindictive prosecution (docket #21) are all **STRICKEN**.

13 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly.

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15 DATED: September 2, 2010.

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18 PHILIP M. PRO
United States District Judge

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